

ORIGINAL

(61)
10/22/02
yIN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIAVINCENZO MAZZAMUTO,
Plaintiff,: CIVIL ACTION
: NO. 1:CV-01-1157
:
:
:
:
:
:

v.

UNUMPROVIDENT
CORPORATION, et al.,
Defendants

JUDGE CONNER

FILED
HARRISBURG, PA

OCT 21 2002

MARY E. DIANDREA, CLERK
Deputy Clerk**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF
RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECUSAL****I. INTRODUCTION**

Defendants UNUMProvident Corporation, Paul Revere Insurance Company and New York Life Insurance Company ("Defendants") file this memorandum of law in opposition to plaintiff's motion for recusal. As explained below, Plaintiff's motion should be denied because a reasonable person informed of all the facts would not question the Court's impartiality.

II. PROCEDURAL HISTORY

Plaintiff filed his complaint in this Court on June 26, 2001, and plaintiff's action was assigned to the docket of the Honorable Yvette Kane. Plaintiff alleges claims for bad faith, under 42 Pa. C.S.A. § 8371, and breach of contract arising from the denial of his claim for disability benefits.

Discovery is closed, the deadline for expert reports was June 28, 2002, and the deadline for motions in limine was October 4, 2002. Defendants have filed a

motion for summary judgment and motions in limine, which are pending before this Court. Plaintiff has filed a motion for partial summary judgment, and a motion in limine, which are also pending before this Court.

This action was reassigned to the Honorable Christopher C. Conner on September 17, 2002. Plaintiff filed a motion for recusal on October 4, 2002. Defendants file this response in opposition to plaintiff's motion.

III. FACTUAL HISTORY

This case involves breach of contract and bad faith claims by a restaurant owner arising out of his claim for disability benefits under a long-term disability policy issued by New York Life. A detailed description of the facts is contained in the brief in support of Defendants' motion for summary judgment which is incorporated herein in its entirety.

In another lawsuit (the "Angino Action"),¹ wholly unrelated to the matter presently pending before this Court and not involving any of the parties to this proceeding, plaintiff's attorney, Richard C. Angino, Esquire, sued a number of defendants including the law firm of Mette, Evans and Woodside, P.C. ("Mette Evans"). On January 14, 2000, the same day Mr. Angino filed his complaint, the Honorable Judge Yvette Kane recused herself. The case was reassigned to the Honorable Judge A.R. Caputo who presided over the case until April 4, 2002 when he granted summary judgment in favor of the defendants. By order of the

Honorable A.R. Caputo, Mr. Angino's claims were dismissed without prejudice and the Clerk of the Court was ordered to close the case.² A copy of the docket is attached as Exhibit A.³

Mr. Angino's appeal is currently pending before the US. Court of Appeals for the Third Circuit (Docket No. 02-2060). A copy of the Court of Appeals docket is attached as Exhibit B.

IV. QUESTIONS PRESENTED

Whether the Court should deny a motion for recusal because a reasonable person informed of all the facts would not question the Court's impartiality.

[Suggested Answer: Yes].

V. ARGUMENT

A. The Court should deny plaintiff's motion for recusal because a reasonable person informed of all the facts would not question the Court's impartiality.

Plaintiff's motion for recusal alleges an "appearance of bias" toward plaintiff's attorney and, by implication, to the plaintiff. While a federal judge is required to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned," 28 U.S.C. § 455(a), the facts as alleged in plaintiff's motion are insufficient to support recusal. "Each § 455(a) case is extremely fact intensive and fact bound, and must be judged on its unique facts and circumstances

¹ Docketed as Angino, et al. v. Van Wagner, et al., No. 3:00-CV-0086 (M.D. Pa.).

² The only remaining issue appears to be a ruling on defendants' motions for attorney's fees. The Court heard arguments on July 29, 2002.

more than by comparisons to situations in prior jurisprudence." George N. Pegula Agency, Inc. v. Monumental Life Ins. Co., 1999 U.S. Dist. LEXIS 23196, at *36 (M.D. Pa. 1999) (Vanaskie, J.) (finding that a reasonable person would not find cause to question the impartiality of the judge who represented a party adverse to plaintiff in a lawsuit years earlier). "The test is how the facts 'appear to the well-informed, thoughtful and objective observer, rather than the hypersensitive, cynical and suspicious person.'" Id. at 18.

In considering a motion for recusal pursuant to § 455(a), the Court "must begin its analysis of the allegations . . . with a presumption against disqualification." Cobell v. Norton, 2002 U.S. Dist. LEXIS 17356, at *13 (D.D.C. 2002). The party moving for recusal "carries a heavy burden," Hardy v. Federal Express Corp., 1998 U.S. Dist. LEXIS 1511, at *1 (E.D. La. 1998), and must show "that an average, reasonable person who knew all the circumstances would harbor doubts about the judges' impartiality," McClelland v. Gronwaldt, 942 F. Supp. 297, 302 (E.D. Tx. 1996).

Plaintiff has not alleged facts from which a reasonable person would question the Court's impartiality. Plaintiff has simply alleged that a suit pending between his attorney, Mr. Angino, and a number of defendants, including the Court's former law firm, Mette Evans, "might cause a reasonable appearance of

³ The defendants' understanding of facts involved in the Angino Action is limited to the contents of the attached docket.

bias." Such an averment alone does not give rise to an appearance of bias.

Bumpus v. Uniroyal Tire Co., 385 F. Supp. 711, 715 (E.D. Pa. 1974) ("Subjective conclusions or opinions that bias or appearance of impropriety may exist are insufficient."). This is especially true here where (a) there is no suggestion that the Court had any individual involvement in the facts giving rise to the Angino Action; and (b) the Angino Action has been dismissed.

Given the lack of factual support alleged in plaintiff's motion, defendants can only infer that plaintiff is making two arguments to support his motion. Neither argument, however, has merit.

First, plaintiff seems to be arguing that the Court is or appears to be biased against Mr. Mazzamuto because of an unspecified dislike for Mr. Angino. Plaintiff offers nothing to support the appearance of bias he suggests. Further, he fails to explain how a reasonable person would transfer this vague reference of unspecified bias against Mr. Angino, across time, and across lawsuits to the prejudice of Mr. Mazzamuto in the present action.

Notably, other courts have found allegations of bias against a party's attorney — even when supported by concrete evidence, unlike here — are not sufficient to support recusal. See Diversified Numismatics v. City of Orlando, 949 F.2d 382, 385 (11th Cir. 1991) (stating that an appellate court should focus on the appearance of bias toward the party and not counsel and holding that recusal not warranted); In re Drexel Burnham Lambert, Inc., 861 F.2d 1307, 1315 (2d Cir.

1988) (reasoning that bias against a lawyer, even if found to exist, without more is not bias against his client, and holding that recusal not required); Davis v. Board of School Comm'rs, 517 F.2d 1044, 1052 (5th Cir.1975) (same). Here, of course, none of the parties to this action have any relation to the Angino Action.⁴

One notable example is In re Beard, 811 F.2d 818, 831 (4th Cir. 1987) where the court held that allegations of bias against an attorney are not sufficient under § 455 unless there is also a showing of bias against the party. Significantly, unlike here, there was actual evidence of bias because the Judge had called plaintiff's attorney a "son-of-a-bitch" and "wise-ass." Id.

Here, plaintiff has failed to overcome the presumption against disqualification, Cobell, 2002 U.S. Dist. LEXIS 17356, at *13, and instead relies upon little more than "unsupported, irrational [and] highly tenuous speculation," McClelland, 942 F. Supp. at 302. These facts do not raise a reasonable question of impartiality. "To hold otherwise would mean that Judges would have to recuse themselves in every case in which a litigant could point to the single fact of a prior association with a party or his attorney and would set a precedent that would certainly prove troublesome." Bumpus, 385 F. Supp. at 714.

Second, plaintiff implies that the threat of "money damages" in the Angino Action creates an appearance of bias. But plaintiff ignores 15 Pa. C.S.A.

⁴ The defendants are not aware of the involvement, if any, of the Honorable Judge Conner in the facts giving rise to the Angino Action.

§ 2925, which precludes liability for shareholders in a professional corporation in the absence of professional malpractice. And even in cases of malpractice, liability arises only for those directly involved, and there is no allegation here that the Court had any involvement. Thus, even if Mr. Angino were to prevail, neither current nor former shareholders of Mette Evans would be personally liable. Again, these facts do not raise a reasonable question of impartiality.

Furthermore, the Court in the Angino Action granted summary judgment in favor of all defendants on April 4, 2002. Thus, in the absence of Mr. Angino securing a reversal on appeal, remand for trial, and victory on the merits, it would appear that money damages against Mette Evans are little more than a remote possibility far off in the future. The defendants are at a loss for how any of these facts are even remotely relevant to this Court or Mr. Mazzamuto's claims. A reasonable person in possession of these facts would not question the impartiality of this Court toward Mr. Mazzamuto and his claims.

Significantly, "a judge has an affirmative duty not to recuse himself or herself where impartiality cannot reasonably be questioned." Pegula, 1999 U.S. Dist. LEXIS 23196, at *19. This makes sense because, "[a] liberal recusal policy would encourage judge shopping." United States v. Pungitore, 15 F. Supp. 2d 705, 715 n.4 (E.D. Pa. 1998) (noting that "strong policy grounds exist to preclude granting of recusal[] for the asking"). Thus, the legislative history of § 455 provides:

Disqualification for lack of impartiality must have a reasonable basis. Nothing in this proposed legislation should be read to warrant the transformation of a litigant's fear that a judge may decide a question against him into a "reasonable fear" that the judge will not be impartial. Litigants ought not have to face a judge where there is a reasonable question of impartiality, but they are not entitled to judges of their own choice.

H.R. Rep. No. 1453, 93d Cong., 2d Sess., reprinted in 1974 U.S.C.C.A.N. 6351, 6355; See United States v. Dalfonso, 707 F.2d 757, 761 (3d Cir. 1983) (citing judge shopping as a problem known to the lawmakers who drafted § 455).

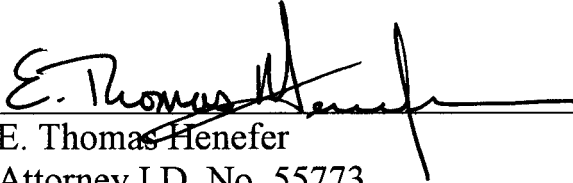
In short, the facts alleged by the plaintiff are woefully insufficient to overcome the presumption against recusal. Cobell, 2002 U.S. Dist. LEXIS 17356, at *13. Rather than show that a reasonable person would question the Court's impartiality, the facts show that only an unreasonable person would question impartiality here. The Court therefore should deny the plaintiff's motion.

VI. CONCLUSION

For the foregoing reasons, Defendants respectfully requests this Court to deny plaintiff's motion for recusal.

Dated: October 21, 2002

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By 

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A

Docket as of August 22, 2002 7:17 pm

Web PACER (v2.3)

U.S. District Court
Middle District of Pennsylvania (Scranton)
CIVIL DOCKET FOR CASE #: 00-CV-86

Angino, et al v. Van Wagner, et al

Filed: 01/13/00
Assigned to: Judge A. Richard Caputo
Jury demand: Both
Demand: \$5,000,000 42043
Nature of Suit: 440
Lead Docket: None
Jurisdiction: Federal Question
Dkt# in other court: None
Cause: 42:1983 Civil Rights Act

RICHARD C. ANGINO
plaintiff

Richard C. Angino
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[COR LD NTC]
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ALICE K. ANGINO
plaintiff

FTS h
Richard C. Angino
(See above)
[COR LD NTC]

KING DRIVE CORP.
plaintiff

Richard C. Angino
(See above)
[COR LD NTC]

v.
J. THOMAS VAN WAGNER
defendant

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	<p>FTS h Jeffrey Lewis 16107389121 jplewis@mckhof.com [COR LD NTC] McKisock & Hoffman, P.C. P.O. Box 3086 105 East Evans Street Suite D West Chester, PA 19381 610-738-8850 FTS ed C. Kent Price (See above) [COR LD NTC] Jeffrey Lewis (See above) [COR LD NTC] C. Kent Price (See above) [COR LD NTC]</p>
JEFFREY SMITH defendant	
RICHARD PEFFER, Individually and as Supervisors of Middle Paxton Township defendant	
MIDDLE PAXTON TOWNSHIP defendant	<p>Jeffrey Lewis (See above) [COR LD NTC] Kathryn L. Simpson (See above) [COR LD NTC] C. Kent Price (See above) [COR LD NTC] Jeffrey Lewis (See above) [COR LD NTC] Kathryn L. Simpson (See above) [COR LD NTC] C. Kent Price [term 03/22/00] (See above) [COR LD NTC] Jeffrey Lewis (See above) [COR LD NTC] Kathryn L. Simpson (See above) [COR LD NTC] C. Kent Price [term 03/22/00] (See above) [COR LD NTC] Jeffrey Lewis (See above) [COR LD NTC] Kathryn L. Simpson [term 03/25/02] (See above) [COR LD NTC] C. Kent Price [term 03/25/02] (See above) [COR LD NTC]</p>
JEFFREY A. ERNICO defendant	
METTE, EVANS & WOODSIDE, P.C. defendant	
MARY JANE DAVIS, Individually and as Middle Paxton Township Codes Enforcement Officer defendant [term 03/25/02]	

LIGHT-HEIGEL & ASSOCIATES,
INC.

defendant

Jeffrey Lewis
[term 03/25/02]
(See above)
[COR LD NTC]
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DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
1/13/00	1	COMPLAINT - N/C given. Jury trial demanded. Receipt #: 130356 Amt: 150.00 (pc) [Entry date 01/13/00]
1/13/00	--	SUMMONS ISSUED as to defendants. (pc) [Entry date 01/13/00]
1/20/00	2	ORDER by Judge Yvette Kane IT IS ORDERED THAT the undersigned shall be recused from the above-captioned action. IT IS FURTHER ORDERED THAT the Clerk of Court shall reassign the case to another judge. (cc: all counsel, Ct, & Judge Kane) (jh) [Entry date 01/20/00]
1/20/00	--	REMARK - Case file sent to Judge Caputo. (jh) [Entry date 01/20/00]
1/28/00	3	LETTER ORDER by Judge A. R. Caputo regarding case assignment and providing practices and procedures for effective case managment. (cc: all counsel court) (sm) [Entry date 01/28/00]
2/16/00	4	ENTRY OF ATTORNEY APPEARANCE for defendants J. Thomas Van Wagner, Jeffrey Smith, Richard Pepper, Middle Paxton Townsh, Jeffrey A. Ernico, Mette, Evans & Woods and Mary Jane Davis by C. Kent Price, Esquire and c of s. (jh) [Entry date 02/17/00]
2/17/00	--	REMARK - Document 4 sent to Scranton. (jh) [Entry date 02/17/00]
2/18/00	5	ENTRY OF ATTORNEY APPEARANCE for defendant Light-Heigel & Associates, Inc., by atty Christopher S. Underhill. (pm) [Entry date 02/22/00]
2/22/00	--	REMARK - Doc 5 to J. Caputo. (pm) [Entry date 02/22/00]
2/23/00	6	WAIVER OF SERVICE OF SUMMONS returned as to defendant

Light-Heigel & Assoc ;request sent 1/19/00 (ta)
[Entry date 02/23/00]

- 2/23/00 7 WAIVER OF SERVICE OF SUMMONS returned as to defendant Jeffrey - Smith, defendant Richard Pepper, defendant Middle Paxton Townsh, defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods, defendant Mary Jane Davis, defendant J. Thomas Van Wagner ;request sent 1/17/00 (ta)
[Entry date 02/23/00]
- 3/17/00 8 JOINT MOTION by defendants Jeffrey Smith, Richard Pepper, Middle Paxton Township, Jeffrey A. Ernico, Mette, Evans & Woods, Mary Jane Davis, J. Thomas Van Wagner to dismiss and for a more definite statement.; Cert Conc/noncurr., C/S, Propo. (pm) [Entry date 03/20/00]
- 3/20/00 -- REMARK - Doc 8 to J. Caputo. (pm) [Entry date 03/20/00]
- 3/20/00 9 ENTRY OF ATTORNEY APPEARANCE for defendants Jeffrey A. Ernico,t Mette, Evans & Woodside by atty Jeffrey P. Lewis. C/S. (pm) [Entry date 03/21/00]
- 3/20/00 10 MOTION by defendant Light-Heigel & Associates, Inc. for joinder in motion to dismiss and for a more definite statement. [8-1]; C/S. (pm) [Entry date 03/21/00]
- 3/20/00 11 MOTION by defendant Light-Heigel & Associates, Inc. for a more definite statement.; C/S, Propo. (pm)
[Entry date 03/21/00]
- 3/20/00 12 BRIEF by defendant Light-Heigel & Associates, Inc. IN SUPPORT of motion for a more definite statement. [11-1]; C/S. (pm) [Entry date 03/21/00]
- 3/21/00 -- REMARK - Docs 9-12 to J. Caputo. (pm) [Entry date 03/21/00]
- 3/21/00 -- REMARK - Doc 8 to case file copies w/proposed order to J. Caputo. (kn) [Entry date 03/21/00]
- 3/22/00 13 PRAECIPE FOR WITHDRAWAL OF APPEARANCE by C. Kent Price, Esq., and law firm of Thomas, Thomas & Hafer, LLP, as cnsl. for Dfts. Jeffrey A. Ernico and Mette, Evans & Woodside, P.C.; C/S. (vg) [Entry date 03/23/00]
- 3/23/00 -- REMARK - Doc. #13 to J. Caputo. (vg) [Entry date 03/23/00]
- 3/27/00 14 BRIEF by Dfts., Jeffrey - Smith, Richard Pepper, Middle Paxton Township, Jeffrey A. Ernico, Mette, Evans & Woodside, Mary Jane Davis, J. Thomas Van Wagner IN SUPPORT of motion to and for a more definite statement. [8-1]; C/S. (vg) [Entry date 03/28/00]
- 3/28/00 -- REMARK - Doc. #14 to J. Caputo. (vg) [Entry date 03/28/00]
- 4/12/00 15 AMENDED complaint [1-1]; substantive only; jury demand; answer due 4/25/00 for Light-Heigel & Assoc, for J. Thomas Van Wagner, for Jane Davis, for Mette, Evans & Woodside, for Jeffrey A. Ernico, for Middle Paxton Township, for Richard Pepper, for Jeffrey - Smith; C/S. (vg)
[Entry date 04/13/00]
- 4/13/00 -- REMARK - Doc. #15 to J. Caputo. (vg) [Entry date 04/13/00]

4/26/00 16 MOTION by J. Thomas Van Wagner, Jeffrey - Smith, Richard Peffer, Middle Paxton Township, Jeffrey A. Ernico, Mette, Evans & Woodside, Mary Jane Davis to dismiss the amended complaint and for more definite stmt.; Cert. of Conc./Non-Conc.; C/S; Propo. (vg) [Entry date 04/27/00]

4/27/00 -- REMARK - Doc. #16 to J. Caputo. (vg) [Entry date 04/27/00]

5/5/00 17 ANSWER by defendant Light-Heigel & Associates, Inc. to amd. cmp.; C/S. (vg) [Entry date 05/08/00]

5/8/00 -- REMARK - Doc. #17 to J. Caputo. (vg) [Entry date 05/08/00]

5/8/00 18 BRIEF by Dfts. J. Thomas Van Wagner, Jeffrey Smith, Richard Peffer, Middle Paxton Township, Jeffrey A. Ernico, Mette, Evans & Woodside, Mary Jane Davis IN SUPPORT of motion to dismiss the amended complaint and for more definite stmt. [16-1]; C/S. (vg) [Entry date 05/09/00]

5/9/00 -- REMARK - Doc. #18 to J. Caputo. (vg) [Entry date 05/09/00]

5/22/00 19 BRIEF by plaintiffs IN OPPOSITION to motion to dismiss the amended complaint and for more definite stmt. [16-1]; reply brief due 6/5/00; with c/s. (sc) [Entry date 05/23/00]

5/23/00 -- REMARK - Doc #19 sent to Scranton. (sc) [Entry date 05/23/00]

5/23/00 20 RESPONSE by plaintiffs to answer and affirmative defenses of defendant Light-Heigel & Associates, Inc. and c of s. (jh) [Entry date 05/24/00]

5/24/00 -- REMARK - Document 20 sent to Scranton. (jh) [Entry date 05/24/00]

6/23/00 21 ORDER by Judge A. R. Caputo - finding the dft Light-Heigel's motion for a more definite statement. [11-1] and the other dfts' motion to dismiss and for a more definite statement. [8-1] are deemed moot. (cc: all counsel court) (cl) [Entry date 06/23/00]

6/23/00 22 SUPPLEMENTAL AUTHORITY IN OPPOSITION by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. to dfts' motion to dismiss (cl) [Entry date 06/26/00]

7/17/00 23 REPLY BRIEF by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods in support of motion to dismiss the amended complaint and for more definite stmt. [16-1] (ao) [Entry date 07/18/00]

8/17/00 24 MEMORANDUM AND ORDER: by Judge A. R. Caputo - 1) denying dfts' motion to dismiss the amended complaint. 2) Dfts' motion for more definite Statement [16-1] is denied. (cc: all counsel court) (cl) [Entry date 08/17/00]

10/4/00 25 ANSWER and AFFIRMATIVE DEFENSES by Dfts Smith, Peffer, Middle Paxton Township, Ernico, Mette, Evans & Woods, Davis, & Van Wagner; jury demand; with c/s. (sc) [Entry date 10/05/00]

10/30/00 26 ORDER by Judge A. R. Caputo Case Management Conference set for 11:00 12/13/00 (cc: all counsel court) (sm) [Entry date 10/30/00]

- 12/7/00 27 MOTION by defendant Light-Heigel & Associates, Inc. to compel pltfs to answer interrogatories and request for prod of documents.; C/S, Propo. (pm) [Entry date 12/08/00]
- 12/7/00 28 MEMORANDUM by defendant Light-Heigel & Associates, Inc. IN SUPPORT OF motion to compel pltfs to answer interrogatories and for prod of documents. [27-1]; C/S. (pm) [Entry date 12/08/00]
- 12/12/00 29 ORDER by Judge A. R. Caputo Case Management Conference rescheduled for 10:00 on 1/5/01 (cc: all counsel court) (sm) [Entry date 12/12/00]
- 12/18/00 30 BRIEF by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. IN OPPOSITION to motion to compel pltfs to answer interrogatories and request for prod of documents. [27-1] ;reply brief due 1/1/01; with c/s. (ta) [Entry date 12/20/00]
- 12/18/00 31 RESPONSE by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. to motion of defendant Light-Heigel & Assoc. to compel plaintiffs to answer interrogatories; with c/s. (ta) [Entry date 12/20/00]
- 12/28/00 32 CASE MANAGEMENT FORM returned (cl) [Entry date 12/28/00]
- 1/8/01 33 MINUTE SHEET of case mgmt. conf. held by Judge A. R. Caputo on 1/5/01 by telephone. CTR: none (ps) [Entry date 01/08/01]
- 1/24/01 34 CASE MANAGEMENT ORDER by Judge A. R. Caputo THAT: 1) Pursuant to the expense and delay reduction plan adopted by this court, this case is assigned to the COMPLEX case management track and shall be placed on the February, 2002 trial list of this court. 2) motions to amend pleadings shall be filed no later than September 30, 2001 3) all discovery shall be commenced in time so as to be completed by July 30, 2001 4) Plaintiff shall comply with the requirements of FRCP 26(a)(2) with respect to expert witnesses not later than August 15, 2001. Defendant shall comply not later than September 15, 2001. Supplemental expert reports shall be due by September 30, 2001. 5) Disclosures required by FRCP 26(a)(3) shall be made by October 15, 2001 6) all dispositive motions along with supporting briefs shall be filed by October 15, 2001. The deadline for in limine motions will be set by further order of this court. 7) a pretrial conference will be held in January, 2002, date and time to be announced. 8) a telephone status conference is scheduled for Monday, March 26, 2001 at 10:30 a.m. ;trial set 2/1/02 ;discovery cutoff 7/30/01 ;pretrial conference Case placed on COMPLEX Case Mgmt. Track (cc: all counsel court) (ts) [Entry date 01/24/01]
- 3/1/01 35 MEMORANDUM AND ORDER: by Judge A. R. Caputo [27-1] that Light Heigel & Assc's motion to compel pltfs to answer interrogatories and request for prod of documents is DENIED in part without prejudice and GRANTED in part as follows: 1. It is denied w/o prejudice as to Interrogatories 2,3,4,5,6,8,9,10,11,12, and 13; 2. It is GRANTED as to interrogatory 7. Plaintiff shall answer 7 within twenty days of this order; With respect to the request for

production of docs, pltfs are ordered to comply with FRCP 34. (cc: all counsel court) (sm) [Entry date 03/01/01]

- 8/3/01 36 MINUTE SHEET of Conference case call held 7/30/01 CTR: NONE (sm) [Entry date 08/03/01]
- 8/3/01 37 MOTION by plaintiffs to compel production and responses to interrogatories and impose sanctions; with exhibits and c/s. (sc) [Entry date 08/07/01]
- 8/3/01 38 BRIEF by plaintiff IN SUPPORT of motion to compel production and responses to interrogatories and impose sanctions [37-1]; with c/s. (sc) [Entry date 08/07/01]
- 8/10/01 39 AMENDED CASE MANAGEMENT ORDER by Judge A. R. Caputo THAT: 1) This case shall be placed on the April, 2002 trial list of this court. 2) Motions to amend pleadings shall be filed no later than November 9, 2001. 3) All discovery shall be commenced in time so as to be completed by September 7, 2001. 4) Plaintiff shall comply with the requirements of FRCP 26(a)(2) with respect to expert witnesses not later than September 26, 2001. Defendant shall comply not later than October 26, 2001. Suppl expert reports shall be due November 9, 2001. 5) Disclosures required by FRCP 26(a)(3) shall be made by November 23, 2001. 6) All dispositive motions along with supporting briefs shall be filed by November 23, 2001. 7) A pretrial conference will be held in March, 2002 date and time to be announced. ;trial set 4/1/02 ;discovery cutoff 9/7/01 ;pretrial conference 3/1/02 (cc: all counsel court) (ts) [Entry date 08/10/01]
- 8/10/01 40 MOTION by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. to file a second amended complaint w/COS (hm) [Entry date 08/10/01] [Edit date 08/10/01]
- 8/10/01 41 BRIEF by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. IN SUPPORT of motion to file a second amended complaint [40-1] (hm) [Entry date 08/10/01]
- 8/13/01 42 BRIEF by defendant Middle Paxton Township, J. Thomas Van Wagner IN OPPOSITION to motion to compel production responses to interrogatories and impose sanctions [37-1] ; reply brief due 8/27/01. C/S (pm) [Entry date 08/14/01]
- 8/13/01 43 BRIEF by defendants Jeffrey A. Ernico, Mette, Evans & Woods IN OPPOSITION to motion to compel production and responses to interrogatories and impose sanctions [37-1] ;reply brief due 8/27/01. C/S, Propo. (pm) [Entry date 08/14/01] [Edit date 08/14/01]
- 8/17/01 44 REPLY BRIEF by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. in support of motion to compel production and responses to interrogatories and impose sanctions [37-1] with c/s. (ts) [Entry date 08/17/01]
- 8/27/01 45 BRIEF by defendants J. Thomas Van Wagner, Jeffrey Smith, Richard Pepper, Mary Jane Davis, Jeffrey A. Ernico, Middle Paxton Township and Mette, Evans & Woodside IN OPPOSITION to motion to file a second amended complaint and c of s; [40-1] reply brief due 9/10/01. (jh) [Entry date 08/28/01]

9/5/01 46 CERTIFICATE of CONCURRENCE/NONCURRENCE by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. re: Petition to File Second Amended Complaint w/COS (hm) [Entry date 09/05/01] [Edit date 09/05/01]

9/5/01 47 EXHIBIT "B" by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. inadvertently omitted from the brief [41-1] in support of the petition to file second amended complaint w/COS (hm) [Entry date 09/05/01]

9/28/01 48 MOTION by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. To Compel Answers to Interrogatories and Responses to Request for Production of Documents w/certificate of nonconcurrence and COS (hm) [Entry date 10/01/01]

10/3/01 49 MEMORANDUM by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. IN SUPPORT OF motion To Compel Answers to Interrogatories and Responses to Request for Production of Documents [48-1] (hm) [Entry date 10/03/01]

10/9/01 50 ORDER by Judge A. R. Caputo that: 1) Plaintiffs' Petition to File a Second Amended Complaint [40-1] is GRANTED; 2) Defendants shall file their responses to the Second Amended Complaint w/in 20 days of the date of this Order. (cc: all counsel court) (kn) [Entry date 10/09/01]

10/9/01 51 SECOND AMENDED complaint filed by plaintiffs jury demand; answer due 10/29/01 for defendants; c/s. (kn) [Entry date 10/09/01]

10/17/01 52 BRIEF by defendant Middle Paxton Townsh IN OPPOSITION to motion To Compel Answers to Interrogatories and Responses Request for Production of Documents [48-1] w/COS;reply brief due 10/30/01 (hm) [Entry date 10/17/01]

10/18/01 53 MINUTE SHEET of conference call re: deadline for defendant's experts held on 10/18/01 before Judge Caputo (hm) [Entry date 10/18/01]

10/22/01 54 Third MOTION by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. to compel defendants to respond to plaintiff's request for production and request for admissions w/cert. of nonconcurrence and COS (hm) [Entry date 10/22/01]

10/22/01 55 BRIEF by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. IN SUPPORT of third motion to compel defendants to respond to plaintiff's request for production and request for admissions [54-1] (hm) [Entry date 10/22/01]

10/22/01 56 Second Amended Case Management ORDER by Judge A. R. Caputo. Defendant shall comply with requirements of FRCP 26(a)(2) with respect to expert witnesses no later than 11/26/01 and supplemental expert reports shall be due 12/9/01. (cc: all counsel court) (hm) [Entry date 10/22/01]

10/29/01 57 ANSWER to second amended complaint by defendant Light-Heigel & Assoc w/COS (hm) [Entry date 10/30/01]

10/29/01 58 BRIEF by defendant Light-Heigel & Assoc IN OPPOSITION to

motion to compel defendants to respond to plaintiff's request for production and request for admissions [54-1] w/COS; reply brief due 11/13/01 (hm) [Entry date 10/30/01]

- 10/29/01 59 RESPONSE to plaintiffs' third motion to compel by defendant Light-Heigel & Assoc w/COS (hm) [Entry date 10/30/01]
- 10/29/01 60 ANSWER by defendants Jeffrey A. Ernico, Mette, Evans & Woods to second amd. complt. w/ jury demand. C/S (pm) [Entry date 10/30/01]
- 10/29/01 61 ANSWER and AFFIRMATIVE DEFENSES by defendants Jeffrey Smith, Richard Pepper, Middle Paxton Townsh, Mary Jane Davis, J. Thomas Van Wagner to second amd complt. w/ jury demand. C/S (pm) [Entry date 10/30/01]
- 11/6/01 62 BRIEF by defendants Middle Paxton Township and Middle Paxton township Board of Supervisors IN OPPOSITION to pltf's third motion to compel defendants to respond to plaintiff's request for production and request for admissions [54-1], with c of s.; reply brief due 11/19/01. (mc) [Entry date 11/07/01] [Edit date 11/07/01]
- 11/8/01 63 AMENDED ANSWER by defendants Jeffrey A. Ernico, Mette, Evans & Woodside, PC w/ jury demand. C/S (pm) [Entry date 11/09/01]
- 11/19/01 64 MOTION by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods to exceed page limitation on a brief in support of summary judgment motion w/COS (hm) [Entry date 11/19/01]
- 11/21/01 65 ORDER by Judge A. R. Caputo granting motion to exceed page limitation on a brief in support of summary judgment motion [64-1] but not to exceed 26 pages. (cc: all counsel court) (sm) [Entry date 11/21/01]
- 11/23/01 66 MOTION by defendant J. Thomas Van Wagner, defendant Jeffrey Smith, defendant Richard Pepper, defendant Middle Paxton Townsh, defendant Mary Jane Davis for summary judgment w/concurrence and COS (hm) [Entry date 11/26/01]
- 11/23/01 67 BRIEF by defendant J. Thomas Van Wagner, defendant Jeffrey Smith, defendant Richard Pepper, defendant Middle Paxton Townsh, defendant Mary Jane Davis IN SUPPORT of motion for summary judgment [66-1] w/COS (hm) [Entry date 11/26/01]
- 11/23/01 68 STATEMENT OF FACTS by defendant J. Thomas Van Wagner, defendant Jeffrey Smith, defendant Richard Pepper, defendant Middle Paxton Townsh, defendant Mary Jane Davis in support of motion for summary judgment [66-1] w/COS (hm) [Entry date 11/26/01]
- 11/23/01 69 EXHIBITS by defendant J. Thomas Van Wagner, defendant Jeffrey Smith, defendant Richard Pepper, defendant Middle Paxton Townsh, defendant Mary Jane Davis in support of motion for summary judgment [66-1] w/COS (hm) [Entry date 11/26/01]
- 11/23/01 70 MOTION by defendant Light-Heigel & Assoc for summary judgment (hm) [Entry date 11/26/01]
- 11/23/01 71 BRIEF by defendant Light-Heigel & Assoc IN SUPPORT of

motion for summary judgment [70-1] (hm)
[Entry date 11/26/01]

11/23/01 72 APPENDIX filed by defendant Light-Heigel & Assoc to brief in support of motion for summary judgment [71-1] (hm)
[Entry date 11/26/01]

11/23/01 73 STATEMENT OF UNDISPUTED FACTS by defendant Light-Heigel & Assoc in support of motion for summary judgment [70-1] (hm)
[Entry date 11/26/01]

11/23/01 74 DISCLOSURE of witnesses and exhibits pursuant to F.R.C.P. 26(a)(3) - by defendant Light-Heigel & Assoc (hm)
[Entry date 11/26/01]

11/23/01 75 CERTIFICATE OF SERVICE of motion for summary judgment, brief in support, appendix to brief, statement of facts, and disclosure of witnesses and exhibits by Christopher Undrehill, attorney for defendant Light-Heigel & Assoc (hm)
[Entry date 11/26/01]

11/23/01 76 MOTION by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods for summary judgment w/COS (hm)
[Entry date 11/26/01]

11/23/01 77 BRIEF by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods IN SUPPORT of motion for summary judgment [76-1] w/COS (hm) [Entry date 11/26/01]

11/23/01 78 STATEMENT OF FACTS by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods in support of motion for summary judgment [76-1] w/COS (hm) [Entry date 11/26/01]

11/23/01 79 EXHIBITS by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods in support of motion for summary judgment [76-1] w/COS (hm) [Entry date 11/26/01]

11/23/01 80 Proposed Trial EXHIBIT LIST by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods, defendant J. Thomas Van Wagner, defendant Jeffrey Smith, defendant Richard Pepper, Middle Paxton Townsh, defendant Mary Jane Davis w/COS (hm)
[Entry date 11/26/01]

11/23/01 81 Trial WITNESS LIST submitted by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods, defendant J. Thomas Van Wagner, defendant Jeffrey Smith, defendant Richard Pepper, defendant Middle Paxton Townsh, defendant Mary Jane Davis w/COS (hm) [Entry date 11/26/01]

11/26/01 82 MEMORANDUM AND ORDER: by Judge A. R. Caputo granting motion to compel production and responses to interrogatories and denying request for sanctions [37-1]. Defendants shall respond to the interrogatories within 20 days and shall make arrangements with the plaintiffs for a complying response to the request for documents within 20 days. (cc: all counsel court) (hm) [Entry date 11/26/01]

12/6/01 83 TRIAL WITNESS LIST submitted by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. w/COS (hm) [Entry date 12/06/01]

12/6/01 84 PROPOSED TRIAL EXHIBIT LIST by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. w/COS

(hm) [Entry date 12/06/01]

- 12/10/01 85 BRIEF by plaintiffs contra defendants' motions for summary judgment; mtn. for sj [76-1]; reply brief due 12/24/01, mtn for sj [70-1]; reply brief due 12/24/01, mtn for sj [66-1]; reply brief due 12/24/01, with c of s. (mc) [Entry date 12/11/01]
- 12/10/01 86 STATEMENT OF UNDISPUTED FACTS (Captioned "Summary") by plaintiffs in opposition to statements of facts [78-1], [73-1] and [68-1] with c of s. (mc) [Entry date 12/11/01]
- 12/10/01 87 TAPE - Video of: Fishing Creek Valley Rd. (Rt. 443), Rt. 209 & Rt. 325 Roads off of Fishing Creek Valley Rd. (mc) [Entry date 12/11/01]
- 12/13/01 88 CERTIFICATE of CONCURRENCE of remaining defendants and NON-CONCURRENCE of plaintiffs to relief requested in Motion for Summary Judgment by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods w/COS (seal) [Entry date 12/13/01]
- 12/21/01 89 REPLY BRIEF by defendant Light-Heigel & Assoc in support of motion for summary judgment [70-1] w/COS (hm) [Entry date 12/21/01]
- 12/21/01 90 RESPONSE by defendant Light-Heigel & Assoc to plaintiffs' statement of undisputed facts w/COS (hm) [Entry date 12/21/01]
- 12/26/01 91 ORDER by Judge A. R. Caputo DENYING pltf's 3rd motion to compel defendants to respond to plaintiff's request for production and request for admissions [54-1] (cc: all counsel court) (sm) [Entry date 12/26/01]
- 12/26/01 92 REPLY BRIEF by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods in support of motion for summary judgment [76-1] w/COS (hm) [Entry date 12/27/01]
- 12/26/01 93 RESPONSE by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods to plaintiffs statement of undisputed facts w/COS (hm) [Entry date 12/27/01]
- 12/26/01 94 RESPONSE by Dfts. J. Thomas Van Wagner, Jeffrey Smith, Richard Pepper, Middle Paxton Township, Mary Jane Davis to pltf's stmt of undisputed facts; C/S. (vg) [Entry date 12/27/01]
- 12/26/01 95 REPLY BRIEF by Dfts. J. Thomas Van Wagner, Jeffrey Smith, Richard Pepper, Middle Paxton Township, Mary Jane Davis in support motion for summary judgment [66-1]; C/S. (vg) [Entry date 12/27/01]
- 1/2/02 96 MEMORANDUM AND ORDER: by Judge A. R. Caputo granting in part and denying in part motion To Compel Answers to Interrogatories and Responses Request for Production of Documents [48-1]. It is granted as follows: The defendant, Middle Paxton Township, shall answer interrogatories 1-9 and shall provide the documents requested in plaintiffs' request for production of documents, set V, request no. 1. It is denied as to plaintiffs' motion to compel as to request no. 2 in plaintiffs' request for production of documents, set V.

(cc: all court) (hm) [Entry date 01/02/02]

- 1/2/02 97 LETTER to court dated 12/27/01 from Jeffrey P. Lewis, attorney for defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods. requesting an oral argument be scheudled re: motions for summary judgment (hm) [Entry date 01/03/02]
- 1/22/02 98 ORDER by Judge A. R. Caputo setting motion for summary judgment [66-1] by defendantsi Wagner, Smith, Peffer, Davis and Middle Paxton Township for oral argument at 11:00 2/8/02 in Harrisburg, setting motion for summary judgment [70-1] by Light-Heigel & Associates for oral argument at 11:00 2/8/02 in Harrisburg and setting motion for summary judgment [76-1] by Ernico Mette, Evans & Woods for oral argument at 11:00 2/8/02 in Harrisburg (cc: all counsel court ct rptr) (hm) [Entry date 01/22/02] [Edit date 01/22/02]
- 2/1/02 99 Second MOTION by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. to compel and impose sanctions w/COS (hm) [Entry date 02/01/02]
- 2/1/02 100 BRIEF by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. IN SUPPORT of motion to compel and impose sanctions [99-1] w/COS (hm) [Entry date 02/01/02]
- 2/1/02 101 AFFIDAVIT of Richard C. Angino regarding motion for summary judgment and motion to compel and impose sanctions [99-1] w/COS (hm) [Entry date 02/01/02]
- 2/6/02 102 FOURTH MOTION by plaintiff Richard C. Angino, plaintiff Alice K. Angino, defendant Jeffrey Smith to compel and to impose sanctions w/nonconcurrence and COS (hm) [Entry date 02/06/02]
- 2/6/02 103 BRIEF by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. IN SUPPORT of motion to compel and to impose sanctions [102-1] w/COS (hm) [Entry date 02/06/02]
- 2/6/02 104 SECOND AFFIDAVIT of Richard Angino regarding motion to compel and impose sanctions [99-1] and motion for summary judgment w/COS (hm) [Entry date 02/06/02]
- 2/7/02 105 THIRD AFFIDAVIT of Richard C. Angino regarding motion fo summary judgment and motions to compel and to impose sanctions w/COS (hm) [Entry date 02/07/02]
- 2/13/02 106 BRIEF by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods IN OPPOSITION to motion to compel and impose sanctions [99-1] and request that defendants' motion for sanctions be grantedi w/COS; reply brief due 2/26/02 (hm) [Entry date 02/13/02]
- 2/13/02 107 MOTION by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods for sanctions against plaintiffs Richard C. Angino, Alice K. Angino, and King Drive Corp. w/COS (hm) [Entry date 02/13/02]
- 2/13/02 108 BRIEF by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods IN SUPPORT of motion for sanctions against plaintiffs Richard C. Angino, Alice K. Angino, and King Drive Corp. [107-1] w/COS (hm) [Entry date 02/13/02]

2/13/02 109 AFFIDAVIT of Jeffrey Lewis regarding motion for sanctions against plaintiffs Richard C. Angino, Alice K. Angino, and King Drive Corp. [107-1], regarding opposition brief [106-1] (hm) [Entry date 02/13/02]

2/14/02 110 FOURTH AFFIDAVIT of Richard C. Angino regarding motion for summary judgment and motions to compel and to impose sanctions [102-1], [99-1] w/COS (hm) [Entry date 02/14/02]

2/20/02 111 ORDER by Judge A. R. Caputo rescheduling oral argument on Defendants' motions for summary judgment for 2:30 on 2/25/02 in a courtroom to be determined in Scranton (cc: all counsel court ct rptr) (hm) [Entry date 02/20/02]

2/21/02 112 REPLY BRIEF by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. in support of motion to compel and impose sanctions [99-1] w/COS (hm) [Entry date 02/21/02]

2/21/02 113 BRIEF by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. IN OPPOSITION to motion for sanctions against plaintiffs Richard C. Angino, Alice K. Angino, and King Drive Corp. [107-1] w/COS; reply brief due 3/6/02 (hm) [Entry date 02/21/02]

2/26/02 114 MINUTE SHEET of oral argument re: discovery and summary judgment motions held 2/25/02 before Judge Caputo. Motions taken under advisement. CTR: Terruso (hm) [Entry date 02/26/02]

2/28/02 115 MOTION by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. to extend deadlines and continue trial w/nonconcurrency and COS (hm) [Entry date 02/28/02]

2/28/02 116 MOTION by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. to amend the second amended complaint to substitute the word "conspired" for "collaborated" throughout the second amended complaint and add a separate civil conspiracy count w/nonconcurrency and COS (hm) [Entry date 02/28/02]

2/28/02 117 AFFIDAVIT of Richard Angino stating that he has prepared and filed the Challenge to the Validity of the 2000 Zoning Ordinance Coupled with a Curative Amendment attached w/COS (hm) [Entry date 02/28/02]

3/1/02 118 BRIEF by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. IN SUPPORT of motion to extend deadlines and continue trial [115-1] w/COS (hm) [Entry date 03/01/02]

3/1/02 119 BRIEF by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. IN SUPPORT of motion to amend the second amended complaint to substitute the word "conspired" for "collaborated" throughout the second amended complaint and add a separate civil conspiracy count [116-1] w/COS (hm) [Entry date 03/01/02]

3/11/02 120 REPLY BRIEF by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods in support of motion for sanctions against plaintiffs Richard C. Angino, Alice K. Angino, and

King Drive Corp. [107-1] with Cert of Service. (ao)
[Entry date 03/12/02]

- 3/11/02 121 STIPULATION that all claims asserted against dft Mary Jane Davis, personally, shall be dismissed w/o prejudice to any claims asserted by the pltfs against Middle Paxton Township forwarded to Judge Caputo for approval. (sm)
[Entry date 03/13/02]
- 3/14/02 122 BRIEF by defendant Light-Heigel & Assoc IN OPPOSITION to motion to extend deadlines and continue trial [115-1] ;
reply brief due 3/27/02 (sm) [Entry date 03/14/02]
- 3/14/02 123 BRIEF by defendant Light-Heigel & Assoc IN OPPOSITION to motion to amend the second amended complaint to substitute the word "conspired" for "collaborated" throughout the second amended complaint and add a separate civil conspiracy count [116-1] ;reply brief due 3/27/02 (sm)
[Entry date 03/14/02]
- 3/15/02 124 BRIEF by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods IN OPPOSITION to motion to extend deadlines and continue trial [115-1] with Exhibits & Cert of Service;
reply brief due 3/28/02 (ao) [Entry date 03/15/02]
- 3/15/02 125 BRIEF (Entitled "Reply") by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods IN OPPOSITION to motion to amend the second complaint [116-1] with Cert of Service;
reply brief due 3/28/02 (ao) [Entry date 03/15/02]
- 3/21/02 126 STENO NOTES of proceedings (Oral Argument) held 2/25/02 before Judge Caputo CTR: Terruso (hm) [Entry date 03/21/02]
- 3/21/02 127 MOTION by defendant J. Thomas Van Wagner, defendant Jeffrey Smith, defendant Richard Pepper, defendant Middle Paxton Township to stay proceedings re: plaintiffs' challenge to zoning ordinance and request for curative amendment w/COS (hm) [Entry date 03/21/02]
- 3/21/02 128 BRIEF by defendant J. Thomas Van Wagner, defendant Jeffrey Smith, defendant Richard Pepper, defendant Middle Paxton Townsh IN SUPPORT of motion to stay proceedings re: plaintiffs' challenge to zoning ordinance and request for curative amendment [127-1] w/COS (hm) [Entry date 03/21/02]
- 3/21/02 129 MOTION by defendant J. Thomas Van Wagner, defendant Jeffrey Smith, defendant Richard Pepper, defendant Middle Paxton Townsh, defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods, defendant Light-Heigel & Assoc for sanctions against plaintiff, Richard C. Angino w/COS (hm)
[Entry date 03/22/02]
- 3/22/02 130 BRIEF by defendant J. Thomas Van Wagner, defendant Jeffrey Smith, defendant Richard Pepper, defendant Mary Jane Davis, defendant Middle Paxton Townsh IN OPPOSITION to motion to extend deadlines and continue trial [115-1] w/COS; reply brief due 4/4/02 (hm) [Entry date 03/22/02]
[Edit date 03/22/02]
- 3/22/02 131 ANSWER by defendant J. Thomas Van Wagner, defendant Jeffrey Smith, defendant Richard Pepper, defendant Mary Davis, defendant Middle Paxton Townsh to Plaintiff's Motion to Extend Deadlines and Continue Trial w/COS (hm)

[Entry date 03/22/02]

- 3/25/02 132 ORDER by Judge A. R. Caputo approving stipulation [121-1] for Dismissal of Defendant Mary Jane Davis. terminating party Mary Jane Davis (cc: all counsel court) (hm) [Entry date 03/25/02]
- 3/26/02 133 REPLY BRIEF by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. in support of motion to amend the second amended complaint to substitute the "conspired" for "collaborated" throughout the second amended complaint and add a separate civil conspiracy count [116-1] w/COS (hm) [Entry date 03/27/02]
- 3/26/02 134 REPLY BRIEF by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. in support of motion to extend deadlines and continue trial [115-1] w/COS (hm) [Entry date 03/27/02]
- 3/28/02 135 ORDER by Judge A. R. Caputo for Plaintiffs to file and serve an answer and brief in response to motion to stay proceedings re: plaintiffs' challenge to zoning ordinance and request for curative amendment [127-1] 4/10/02 (cc: all counsel court) (hm) [Entry date 03/28/02]
- 4/1/02 136 AFFIDAVIT of Mary Jane Davis in support of motion for sanctions against plaintiff, Richard C. Angino [129-1] (hm) [Entry date 04/01/02]
- 4/1/02 137 BRIEF by defendant Jeffrey Smith, defendant Richard Pepper, defendant Middle Paxton Townsh, defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods, defendant J. Thomas Van Wagner, defendant Light-Heigel & Assoc IN SUPPORT of motion for sanctions against plaintiff, Richard C. Angino [129-1] with c/s. (ts) [Entry date 04/01/02]
- 4/1/02 138 CERTIFICATE of NON-CONCURRENCE by defendant Jeffrey Smith, defendant Richard Pepper, defendant Middle Paxton Townsh, defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods, defendant J. Thomas Van Wagner, defendant Light-Heigel & Assoc re: motion for sanctions (ts) [Entry date 04/01/02]
- 4/4/02 139 ORDER by Judge A. R. Caputo granting motion for summary judgment [76-1], granting motion for summary judgment [70-1], granting motion for summary judgment [66-1], dismissing the complaint [1-1] without prejudice, and directing the Clerk of Court to close this case Case terminated (cc: all counsel court sec) (hm) [Entry date 04/04/02]
- 4/12/02 140 Notice of appeal by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. from District Court order filed 4/4/02 [139-1] (Filing fee paid, TPO mailed to attorney, certified copies, notice of appeal, order being appealed, with info/ack letter to USCA.) (cc: cnsl, C/R Ct.) Receipt No. & Amt: 333 87628 (hm) [Entry date 04/12/02]
- 4/18/02 141 MOTION by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods for attorney fees w/COS (hm) [Entry date 04/18/02]

4/19/02 142 MOTION by defendant Light-Heigel & Assoc for attorney fees and nontaxable expenses w/COS (hm) [Entry date 04/19/02]

4/22/02 143 EMERGENCY MOTION by defendant J. Thomas Van Wagner, defendant Jeffrey Smith, defendant Richard Pepper, defendant Middle Paxton Townsh to stay proceedings re: plaintiffs' challenge to zoning ordinance and request for curative amendment pending plaintiffs' appeal to the Third Circuit w/nonconcurrency and COS (hm) [Entry date 04/22/02]

4/22/02 144 BRIEF by defendant J. Thomas Van Wagner, defendant Jeffrey Smith, defendant Richard Pepper, defendant Middle Paxton Townsh IN SUPPORT of motion to stay proceedings re: plaintiffs' challenge to zoning ordinance and request for curative amendment pending plaintiffs' appeal to the Third Circuit [143-1] w/COS (hm) [Entry date 04/22/02]

4/22/02 145 Notification by Circuit Court of Appellate Docket Number 02-2060. Case manager is Lynn Lopez. (hm) [Entry date 04/22/02]

4/22/02 146 TRANSCRIPT PURCHASE ORDER for dates: None filed by attorney (hm) [Entry date 04/22/02]

4/22/02 -- Transmitted notification of supplemental record on appeal to USCA via e-mail Consisting of: TPO (hm) [Entry date 04/22/02]

4/24/02 147 ORDER by Judge A. R. Caputo denying emergency motion to stay proceedings re: plaintiffs' challenge to zoning ordinance and request for curative amendment pending plaintiffs' appeal to the Third Circuit [143-1] (cc: all counsel court) (hm) [Entry date 04/24/02]

5/7/02 148 BRIEF by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. IN OPPOSITION to motion for attorney fees [141-1] w/COS; reply brief due 5/20/02 (hm) [Entry date 05/08/02]

5/7/02 149 RESPONSE by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. to motion for attorney's fees and costs filed by Jeffrey Ernico and Mette, Evans Woodside, PC w/COS (hm) [Entry date 05/08/02]

5/7/02 150 BRIEF by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. IN OPPOSITION to motion for attorney fees and nontaxable expenses [142-1] w/COS ; reply brief due 5/20/02 (hm) [Entry date 05/08/02]

5/7/02 151 RESPONSE by plaintiff Richard C. Angino, plaintiff Alice K. Angino, plaintiff King Drive Corp. to motion for attorney's fees and expenses filed by Light-Heigel & Assoc. Inc. w/COS (hm) [Entry date 05/08/02]

5/20/02 152 REPLY BRIEF by defendant Light-Heigel & Assoc in support of motion for attorney fees and nontaxable expenses [142-1] w/COS (seal) [Entry date 05/20/02]

6/19/02 153 ORDER by Judge A. R. Caputo setting motion for attorney fees [141-1] and motion for attorney fees and nontaxable expenses [142-1] for hearing at 10:30 on 7/15/02 in a courtroom to be determined in Scranton (cc: all counsel court ctrptr) (hm) [Entry date 06/19/02]

7/12/02 154 ORDER by Judge A. R. Caputo rescheduling in court hearing re motions for atty fees and to 7/25/02 at 10:00 (cc: faxed and phone to all counsel court) (sm) [Entry date 07/12/02]

7/16/02 155 ORDER by Judge A. R. Caputo rescheduling hearing re motions for attorney fees and nontaxable expenses [142-1] and [141-1] at 4:30 7/29/02 (cc: all counsel court) (sm) [Entry date 07/16/02]

7/26/02 156 MOTION by plaintiffs in limine to limit awardable attorneys fees to time after second amended complaint; with c/s. (rb) [Entry date 07/26/02]

7/26/02 157 BRIEF by plaintiffs IN SUPPORT of mtn in limine to limit awardable attorneys fees to time after second amended complaint [156-1]; with c/s. (rb) [Entry date 07/26/02]

7/26/02 158 PETITION by plaintiffs for attorney fees; with c/s. (rb) [Entry date 07/26/02]

7/26/02 -- SECOND SUPPLEMENTAL record on appeal to USCA Consisting of: Documents 156, 157, & 158. (jh) [Entry date 07/26/02]

7/26/02 159 Acknowledgement Received of 2nd supplemental record in above matter. (pm) [Entry date 07/29/02]

7/29/02 160 JOINT BRIEF by defendant Light-Heigel & Assoc, defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods IN SUPPORT of motion for attorney fees and nontaxable expenses [142-1], motion for attorney fees [141-1] w/COS (hm) [Entry date 07/30/02]

7/30/02 161 MINUTE SHEET of Hearing on motions for attorney fees held 7/29/02 before Judge Caputo. Motions taken under advisement. CTR: Lou Terruso (hm) [Entry date 07/30/02]

8/9/02 162 BRIEF (Entitled "Answer") by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods, defendant Light-Heigel & Assoc IN OPPOSITION to motion in limine to limit awardable attorneys fees to time after second amended complaint [156-1] with C/S; reply brief due 8/22/02 (ao) [Entry date 08/12/02]

8/9/02 163 BRIEF (Entitled "Answer") by defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods, defendant Light-Heigel & Assoc IN OPPOSITION to petition motion for attorney fees [158-1] with C/S; reply brief due 8/22/02 (ao) [Entry date 08/12/02]

8/12/02 164 BRIEF by plaintiffs IN OPPOSITION to motion for attorney fees [141-1]; with c/s. (rw) [Entry date 08/13/02]

8/21/02 165 JOINT REPLY BRIEF by defendant Light-Heigel & Assoc, defendant Jeffrey A. Ernico, defendant Mette, Evans & Woods in support of motion for attorney fees and nontaxable expenses [142-1], motion for attorney fees [141-1] w/COS (hm) [Entry date 08/22/02]

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General Docket

US Court of Appeals for the Third Circuit

Court of Appeals Docket #: 02-2060 Filed: 4/22/02
 Nsuit: 3440 Civil Rights: Other
 Angino, et al v. Van Wagner, et al
 Appeal from: U.S. District Court for the Middle District of Pennsylvania

 Lower court information:

District: 0314-3 : 00-cv-00086
 Trial Judge: A. Richard Caputo, District Judge
 Court Reporter: Louis J. Terruso
 Date Filed: 1/13/00
 Date order/judgment: 4/4/02
 Date NOA filed: 4/11/02

 Fee status: paid

 Prior cases:

None

Current cases:

None

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02-2060 Angino, et al v. Van Wagner, et al

RICHARD C. ANGINO
 Appellant

Richard C. Angino
 FAX 717-238-5610
 717-238-6791
 [COR NTC ret]
 Angino & Rovner
 4503 North Front Street
 Harrisburg, PA 17110

ALICE K. ANGINO
 Appellant

Richard C. Angino
 (See above)
 [COR NTC ret]

KING DRIVE CORP
 Appellant

Richard C. Angino
 (See above)
 [COR NTC ret]

v.

J. THOMAS VAN WAGNER
 Appellee

C. Kent Price
 FAX 717-237-7105

717-255-7632
[COR NTC ret]
Thomas, Thomas & Hafer
305 North Front Street
P.O. Box 999
Harrisburg, PA 17108

JEFFREY SMITH
Appellee

C. Kent Price
(See above)
[COR NTC ret]

RICHARD PEFFER, Individually
and as Supervisors of Middle
Paxton Township
Appellee

C. Kent Price
(See above)
[COR NTC ret]

MIDDLE PAXTON TOWNSHIP
Appellee

C. Kent Price
(See above)
[COR NTC ret]

JEFFREY A. ERNICO
Appellee

Jeffrey P. Lewis
FAX 610-738-9121
610-738-8850
[COR NTC ret]
McKissock & Hoffman
P.O. Box 3086
West Chester, PA 19381

MARY JANE DAVIS, Individually
and as Middle Paxton Township
Codes Enforcement Officer
Appellee

C. Kent Price
(See above)
[COR NTC ret]

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LIGHT HEIGEL ASSOC
Appellee

Christopher S. Underhill
FAX 717-299-3160
717-299-7254
[COR NTC ret]
Hartman, Underhill & Brubaker
221 East Chestnut Street
Lancaster, PA 17602

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02-2060 Angino, et al v. Van Wagner, et al

RICHARD C. ANGINO; ALICE K. ANGINO; KING DRIVE CORP

Appellants

v.

J. THOMAS VAN WAGNER; JEFFREY SMITH; RICHARD PEFFER,
Individually and as Supervisors of Middle Paxton Township;
MIDDLE PAXTON TOWNSHIP; JEFFREY A. ERNICO; MARY JANE DAVIS,
Individually and as Middle Paxton Township Codes Enforcement
Officer; LIGHT HEIGEL ASSOC

Appellees

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02-2060 Angino, et al v. Van Wagner, et al

4/22/02 CIVIL CASE DOCKETED. Notice filed by Richard C. Angino,
Alice K. Angino, and King Drive Corp. (lml)

4/22/02 RECORD available on Middle District PA RACER. (lml)

4/22/02 TRANSCRIPT PURCHASE ORDER (PART I), no proceedings in
District Court. (lml)

5/1/02 APPEARANCE from Attorney Christopher S. Underhill on behalf
of Appellee Light Heigel Assoc, filed. (lml)

5/1/02 (POSITIVE) DISCLOSURE STATEMENT on behalf of Appellee Light
Heigel Assoc, filed. (lml)

5/1/02 APPEARANCE from Attorney C. Kent Price on behalf of
Appellees J. Thomas Van Wagner, Jeffrey Smith, Richard
Peffer, Middle Paxton and Mary Jane Davis, filed. (slc)

5/2/02 APPEARANCE from Attorney Richard C. Angino on behalf of
Appellants Richard C. Angino, Alice K. Angino, and King
Drive Corp, filed. (lml)

5/2/02 DISCLOSURE STATEMENT on behalf of Appellants Richard C.
Angino, Alice K. Angino, and King Drive Corp, filed. (lml)

5/2/02 INFORMATION STATEMENT on behalf of Appellants Richard C.
Angino, Alice K. Angino, and King Drive Corp, received. (lml)

5/2/02 CONCISE SUMMARY OF CASE on behalf of Appellants Richard C.
Angino, Alice K. Angino, and King Drive Corp, received. (lml)

5/2/02 APPEARANCE from Attorney Jeffrey P. Lewis on behalf of
Appellee Jeffrey A. Ernico, filed. (lml)

5/2/02 DISCLOSURE STATEMENT on behalf of Appellee Jeffrey A.
Ernico, filed. (lml)

5/8/02 BRIEFING NOTICE ISSUED. Appellant brief and appendix due
6/17/02. (lml)

6/14/02 BRIEF/APPENDIX volume I on behalf of Appellants, Pages: 53,
Copies: 10, Word Count: 11,894, Delivered by mail, filed.
Certificate of service date 6/14/02. (mcw)

6/14/02 APPENDIX on behalf of Appellants, Copies: 4, Volumes: 5, Delivered by mail, filed. Certificate of service date 6/14/02. (Volume I attached to appellants' brief). (mcw)

7/17/02 JOINT BRIEF on behalf of Appellees J. Thomas Van Wagner, Jeffrey Smith, Richard Peffer, Middle Paxton, Jeffrey A. Ernico, Mary Jane Davis and Light Heigel Assoc, Pages: 26, Copies: 10. Delivered by mail, filed. Certificate of service date 7/17/02. (lal)

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02-2060 Angino, et al v. Van Wagner, et al

7/23/02 Notice of telephone request to Jeffrey P. Lewis, counsel for Appellees Jeffrey A. Ernico and Mette, Evans & Woodside, P.C., requesting motion for leave to file brief in noncompliant font size and to file supplemental appendix attached to brief. Response due in 3 days. (lal)

7/26/02 COMPLIANCE RECEIVED from Jeffrey P. Lewis, counsel for Appellees Jeffrey A. Ernico and Mette, Evans & Woodside, received motion for leave to file brief in noncompliant font size and to file supplemental appendix attached to brief. (lal)

7/26/02 JOINT MOTION by Appellees for leave to file brief in non-compliant font size and for leave to file supplemental appendix attached to brief, filed. Answer due 8/7/02. Certificate of Service dated 7/25/02. (lal)

7/26/02 RECORD available on Middle District of PA RACER updated on 7/26/02. (lml)

7/30/02 ORDER (Clerk) granting motions by Appellees for leave to file brief in noncompliant font size, the motion is granted with filing as of July 17, 2002. With respect to Appellees' request for leave to file supplemental appendix, the motion is granted with filing as of the date of this order, filed. (lal)

7/30/02 SUPPLEMENTAL APPENDIX attached to brief on behalf of Appellees. Copies: 10, Volumes: 1. Delivered by mail, filed. Certificate of service date 7/17/02. (lal)

7/30/02 REPLY BRIEF on behalf of Appellants Richard C. Angino, Alice K. Angino and King Drive Corp, Copies: 10, Delivered by mail, filed. Certificate of date 7/30/02. (lal)

8/9/02 MOTION by Appellees J. Thomas Van Wagner, Jeffrey Smith, Richard Peffer, Middle Paxton, Jeffrey A. Ernico and Light Heigel Assoc to file supplemental brief entitled Joint Surreply Brief, filed. Answer due 8/21/02. Certificate of Service dated 8/8/02. ZZ#SEND ZZ#TO ZZ#MERITS ZZ#PANEL (gpk)

8/14/02 ORDER (Clerk) referring to the merits panel Appellees' motion to file supplemental brief entitled "Joint Surreply

Brief", filed. ZZ#SEND ZZ#TO ZZ#MERITS ZZ#PANEL. (gpk)

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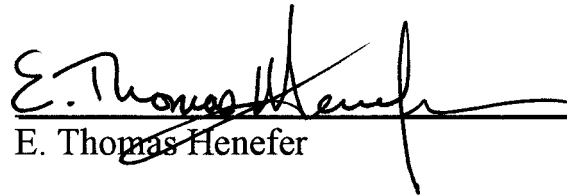
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CERTIFICATE OF SERVICE

I, E. THOMAS HENEFER, Esquire, certify that on this date, I served a certified true and correct copy of the foregoing MEMORANDUM OF LAW upon the following counsel of record, by personal delivery to the address as follows:

Richard C. Angino, Esquire
4503 North Front Street
Harrisburg, PA 17110-1708


E. Thomas Henefer

Date: October 21, 2002